

Court of Appeals, State of Michigan

ORDER

Kenneth Wayne v Chuck Byce

Docket No. 264619

LC No. 05-000311-AP

Michael R. Smolenski
Presiding Judge

Richard A. Bandstra

Joel P. Hoekstra
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the July 28, 2005 order of the Alpena Circuit Court and the April 18, 2005 order of the Alpena District Court are VACATED to the extent that the orders grant summary disposition and uphold that summary dismissal. The matter is REMANDED to the trial court for a determination of whether defendant should be prevented from asserting the invalidity of the contract consistent with the principles set forth in *Michigan Trust Co v Herpolsheimer*, 256 Mich 589, 598; 240 NW 6 (1932), quoting *Carlisle v National Oil & Development Co*, 108 Okla 18; 234 Pac 629 (1924).

The Court does not retain jurisdiction.

In all other regards the application for leave to appeal is DENIED for lack of merit in the grounds presented.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 20 2006
Date

Sandra Schultz Mengel
Chief Clerk